

UNITED STATE BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CHAPTER 7
: :
CASSANDRA JOHNSON LANDRY, : CASE NO. 18-55697 - LRC
: :
DEBTOR. : :

**UNITED STATES TRUSTEE'S RESPONSE TO DEBTOR'S
MOTION TO REMOVE CHAPTER 7 BANKRUPTCY TRUSTEE**

COMES NOW Daniel M. McDermott, United States Trustee for Region 21, in furtherance of his administrative responsibilities imposed pursuant to 28 U.S.C. § 586(a) hereby responds to Debtor's Motion to Remove Chapter 7 Bankruptcy Trustee, filed on December 7, 2018 (Doc. No. 111). The United States Trustee states as follows:

1. Cassandra Johnson Landry (the "Debtor"), commenced this case April 3, 2018, by filing a petition for relief under chapter 13 of the United States Bankruptcy Code.
2. On September 14, 2018, the Court converted the case to chapter 7, and Neil C. Gordon ("Mr. Gordon") was appointed as the interim chapter 7 trustee.
3. On September 4, 2018, Mr. Gordon rejected his appointment as chapter 7 trustee (Doc. No. 86).
4. On September 27, 2018, the United States Trustee appointed Robert Trauner ("Mr. Trauner") as interim chapter 7 trustee (Doc. No. 87).
5. On October 15, 2018, Debtor filed a motion to remove Mr. Trauner as chapter 7 trustee (Doc. No. 91).
6. On October 23, 2018, Mr. Trauner rejected his appointment as chapter 7 trustee (Doc. No. 94).

7. On October 24, 2018, the United States Trustee appointed S. Gregory Hays (“Trustee Hays”) as the interim chapter 7 trustee (Doc. No. 96).

8. An initial meeting of creditors was held pursuant to section 341 of the Bankruptcy Code on November 27, 2018.

9. On December 7, 2018, Debtor filed a Motion to Remove Chapter 7 Bankruptcy Trustee (the “Motion”) (Doc. No. 111).

10. In the Motion, Debtor seeks removal of Trustee Hays due to an alleged conflict of interest.

11. The Court should deny the request to remove Trustee Hays because Debtor has failed to sustain her burden of proof or otherwise show any cause for the removal of Trustee Hays.

12. Section 324(a) of the Bankruptcy Code governs removal of trustees. It provides that the court, after notice and a hearing, may remove a trustee for cause. 11 U.S.C. § 324(a).

13. Cause is not defined in the Bankruptcy Code and must be determined on an *ad hoc* basis. *In re Livore*, No. 08-32423, 2010 WL 1849322, at *2 (Bankr. D.N.J. May 6, 2010) (*citing In re Reed*, 178 B.R. 817, 821 (Bankr. D. Ariz. 1995)).

14. “Cause has been found to exist, *inter alia*, where the trustee is not disinterested, fails to perform his or her duties, unreasonably delays in the performance of those duties, or violates the fiduciary duty to the estate.” *Id.* (*citing In re Lundborg*, 110 B.R. 106, 108 (Bankr. D. Conn. 1990)).

15. The moving party must also establish actual injury or fraud. *Id.* (*citing In re Martin*, 817 F.2d. 175, 181 (1st Cir. 1987)).

16. “Furthermore, a trustee is protected by the business judgment rule, and cause for removal will only be found where the trustee acts in bad faith or unreasonably under the circumstances.” *Id.* (citing *In re Curlew Valley Assocs.*, 14 B.R. 506, 513 (Bankr. D. Utah 1981)).

17. Finally, in determining whether to remove a trustee, a court should consider the best interests of the estate, rather than the interests of a single movant. *Livore*, 2010 WL 1849322, at *2 (citing *In re Baker*, 38 B.R. 705, 708 (Bankr. D. Md. 1983)).

18. The vague and unsubstantiated allegations raised by Debtor in her motion do not constitute sufficient cause to warrant the removal of Trustee Hays.

WHEREFORE, the United States Trustee respectfully requests the Court enter an order (i) denying Debtor’s motion to remove Trustee Hays; (ii) and for such other relief as the court deems necessary and appropriate.

Respectfully submitted this 21st day of December, 2018.

DANIEL M. MCDERMOTT
UNITED STATES TRUSTEE
REGION 21

By: _____/s/
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CERTIFICATE OF SERVICE

This is to certify that I have on this day electronically filed the foregoing *United States Trustee's Response to Debtor's Motion to Remove Chapter 7 Bankruptcy Trustee* using the Bankruptcy Court's Electronic Case Filing program, which sends a notice of this document and an accompanying link to this document to the following parties who have appeared in this case under the Bankruptcy Court's Electronic Case filing program.

S. Gregory Hays
Chapter 7 Trustee
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I further certify that on this day, I caused a copy of this document to be service via United States First Class Mail, with adequate postage prepaid on the following parties at the address shown for each.

Cassandra Johnson Landry
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Grayson, GA 30017

_____/s/
Lindsay P. S. Kolba